TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 175.

WARREN HALL, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 14, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 175.

WARREN HALL, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 In U. S. Court of Claims, December term, 1867.

Petition.—Filed April 3, 1868.

WARREN HALL
vs.
THE UNITED STATES. } 3232.

To the honorable Court of Claims:

The petition of Warren Hall, a colored citizen of the United States, resident of Louisiana, Pike County, Missouri, formerly a resident of near Greenville, of Washington County, in the State of Mississippi, showeth:

That in the month of April the 14th, A. D. 1863, your petitioner was the owner of and in possession of seventy-three bales of cotton, of the aggregate weight of thirty-five thousand three hundred and twenty (35,320 lbs.) pounds, then in the said county of Washington and State of Mississippi; that soon after the occupation of said county by the United States forces, all of said cotton was seized and taken possession of by General Frederick Steele, then in command of the United States military forces at that point; that the said cotton was turned over by the officers seizing it, to an agent of the Treasury Department, by whom it was sold, and the net proceeds thereof have been paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise sum for which said cotton was sold, or the expenses attending its seizure, shipment, or transportation and sale; but he states on information and belief that the net proceeds thereof which have been paid into the Treasury, amount to one dollar per pound, or the aggregate sum of thirty-five thousand three hundred and twenty ($35,320) dollars, which

2 sum he is entitled to receive under the provisions of the third section of the act of Congress approved March 12, 1863, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

Your petitioner further shows that he has at all times borne true allegiance to the Government of the United States, and that he has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and he prays the judgment of this honorable court for the said sum of thirty-five thousand three hundred and twenty ($35,320) dollars.

WARREN HALL.

Warren Hall, being duly sworn, deposeth and saith that he is the claimant named in the foregoing petition; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated; that he is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts as stated in said petition are true.

WARREN HALL.

Subscribed and sworn to before me, at Louisiana, Pike County, Mo., this 18th day of February, 1868.

[SEAL.]

B. F. HESSER,
Notary Public, Pike County, Mo.

Claimant's address is: Warren Hall, Louisiana, Pike County, Mo.

Claimant's solicitors: HUGHES, DENVER & PECK,
258 *G Street, Washington, D. C.*

3 In the United States Court of Claims.

WARREN HALL
vs.
THE UNITED STATES. } No. 3279. May 27, 1868.

To the honorable the judges of the Court of Claims:

Your petitioner, Warren Hall, a loyal citizen of the United States, respectfully represents—

That he was, in April, A. D. 1863, the owner, and had in his possession, at his then place of residence, in Washington County, State of Mississippi, 41 bales of cotton, of the average weight of 500 pounds per bale, 14 bales, of the average weight of 480 pounds per bale, and 18 bales, of the average weight of 450 pounds per bale; in all, seventy-three (73) bales of cotton;

That one Capt. Cobb, pursuant to orders of Maj. Gen. Frederick Steele, removed this cotton to the landing at Greenville, Miss., whence it was shipped by United States Quartermaster E. M. Joel to Milliken's Bend, La., where it was turned over to Quartermaster B. F. Reno, and used for protecting the transports in running the batteries at Vicksburg; that, after having performed this service, and in the month of June, A. D. 1863, it was brought up the Mississippi River on the steamer Hiawatha, —— Carson, master, to Memphis, in the State of Tennessee, and there sold, as your petitioner is informed and believes, by the United States authorities, for one dollar a pound, and the proceeds properly accounted for to the Government of the United States;

4 That application for payment for this cotton has been made to the Quartermaster-General, and refused. (Exhibit A.)

That he is entitled, by section 3 of the act of Congress approved March 12, 1863, to the actual net proceeds of said cotton; but, not having access to the account of sale of said cotton by the United States authorities, he is unable to state the exact amount of said net proceeds;

That he is a loyal citizen of the United States; has at all times borne true allegiance to the Government of the United States, and has never voluntarily aided, or abetted, or given encouragement to the rebellion against said Government; and he therefore prays your honorable court to adjudge and award to him the amount which, upon the hearing, shall appear to have been realized by the United States Government for said cotton; and will ever pray.

WARREN HALL,
By BLACK, LAMON & CO.,
Attorneys for Plaintiff.

Ward H. Lamon, one of the attorneys for plaintiff, Warren Hall, being duly sworn, deposes and says, from information and belief, that no assignment of said claim, or any part thereof or interest therein, has been made; that said claimant is justly entitled to the amount therein claimed from the United States, and that he believes the facts as stated in said petition to be true.

WARD H. LAMON.

Sworn to and subscribed before me, John S. Hollingshead, a notary public in and for the city of Washington, D. C., this 6th day of April, A. D. 1868.

JOHN S. HOLLINGSHEAD,
Notary Public.

5 EXHIBIT A.

QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., April 29, 1867.

Messrs. BLACK, LAMON & Co.,
Washington, D. C.:

GENTLEMEN: Your letter of the 19th instant, enclosing papers in the claim of Warren Hall, a colored man, for 73 bales of cotton alleged to have been furnished to Gen. F. Steele, U. S. Volunteers, at Greenville, Washington County, Miss., in April, 1863, has been received, and in reply you are informed—

That this claim cannot be considered under the act of July 4, 1864, chap. 240, because, 1st, that act only applies to claims for quartermaster and commissary stores taken for the use of the Army; and 2d, the act of February 9, 1867, (Public, No. 33,) sets forth that the provisions of the act of July 4, 1864, shall not be construed to authorize the settlement of any claims for supplies or stores taken or furnished for the use of, or used by, the Army of the United States, when such claims originated during the war for the suppression of the rebellion, in a State declared in insurrection.

By order of the Quartermaster-General:

Very respectfully, your obedient servant,

BENJ. C. CARD,
Brevet Brig. Gen. U. S. A., A. Q. M.

Bk. 71, B. 274, C. 91–47.

Claimant's solicitors,

BLACK, LAMON & CO.,
Washington, D. C.

6 In the United States Court of Claims, December term, A. D. 1867.

WARREN HALL
vs.
THE UNITED STATES. } No. 3232.

And the said defendants, by their solicitor, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of thirty-five thousand three hundred and twenty dollars, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN J. WEED,
Assistant Solicitor for the United States.

And for a further plea to the said petition, the said defendants say, that the said claimant ought not to have or maintain his aforesaid action

against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described, in the Court of Claims, as provided by the 3d section of the act of Congress approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

JOHN J. WEED,
Assistant Solicitor for the United States.

Filed June 30, 1868.

7 In the United States Court of Claims, December term, A. D. 1867.

WARREN HALL
vs.
THE UNITED STATES. } No. 3279.

And the said defendants, by their solicitor, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of thirty-five thousand three hundred and sixty dollars, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN J. WEED,
Assistant Solicitor for the United States.

And for a further plea to the said petition, the said defendants say, that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described, in the Court of Claims, as provided by the 3d section of the act of Congress approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

JOHN J. WEED,
Assistant Solicitor for the United States.

Filed June 30, 1868.

8 In the Court of Claims, Dec. term, 1868.

WARREN HALL
vs.
THE UNITED STATES. } No. 3232.

Hughes, Denver & Peck, attys.

THE SAME
vs.
THE SAME. } 3279.

Black, Lamon & Co., attys.

The defendants move for an order requiring the claimant in the two causes above entitled, both brought for the same cause of action, to elect within thirty days on which of the two he will proceed, and to discontinue the other of said causes, and that the hearing of said causes be in the mean time stayed.

ROBT. S. HALE,
Sp. Counsel, &c.

Filed Jan'y 21, 1869.

9 In the United States Court of Claims.

WARREN HALL
vs.
THE UNITED STATES. } 3232.

SAME
vs.
SAME. } 3279.

BENJAMIN ROACH
vs.
SAME. } 3541.

Mr. Hale, special counsel for the defendants, filed a motion that the claimants in these cases respectively be ordered to interplead.

Motion submitted, January 25, 1869.

A true copy of record.

WARREN HALL
vs.
THE UNITED STATES. } 3232.

SAME
vs.
SAME. } 3279.

BENJAMIN ROACH
vs.
SAME. } 3541.

The motion filed by Mr. Hale in these cases, on the 25th January, 1869, for an order requiring the parties to interplead, was allowed.

By the court.

February 8, 1869.

A true copy of record.

10 In the United States Court of Claims.

WARREN HALL
vs.
THE UNITED STATES. } 3232.

SAME
vs.
SAME. } 3279.

BENJAMIN ROACH
vs.
SAME. } 3541.

Ordered: That the claimants in the above cases interplead within fifteen days from this date.

By the court.

February 9, 1869.

A true copy of record.

In the United States Court of Claims.

WARREN HALL
vs.
THE UNITED STATES. } 3232.

SAME
vs.
SAME. } 3279.

Ordered by the court, and by consent of counsel, that the above two cases be consolidated as one; and that the evidence taken under both petititons shall be used in the same trial.

By the court.

February 22, 1869.

A true copy of record.

U. S. Court of Claims.

11 *Petition of interpleader.*

BENJAMIN ROACH
vs.
THE UNITED STATES. }

To the honorable the judges of the United States Court of Claims:

Your petitioner, Benjamin Roach, by way of interpleader, respectfully showeth:

That he is a citizen of the United States, and resides in the city of New Orleans, in the parish of Orleans, and in the State of Louisiana*a*; and that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said Government.

Your petitioner states that in the month of April, A. D. 1863, he was the owner and in possession of seventy-four bales of cotton, weighing in all thirty-seven thousand pounds, and which was then and there worth twenty-nine thousand six hundred dollars, on his plantation near Greenville, in Washington County, in the State of Mississippi; that on the 17th day of April, 1863, after the occupation of that portion of the State by the United States forces, all of said cotton was, without the consent of your petitioner, and against his will, seized and taken possession of by Wm. H. Barlow, lieutenant and quartermaster of the 31st regiment of Missouri infantry, acting under orders of Major-General Steele, commanding the United States forces at that point; that the said cotton was placed on board the steamer Metropolitan, and shipped to Major-General Grant, at Young's Point, in the State of Louisiana, and there placed on board of gunboats; and your petitioner is informed and believes that the said cotton was turned over to the
12 agents of the Treasury Department, by whom it was sold, and

the net proceeds thereof have been paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise sum for which said cotton was sold, or the expenses attending its seizure, shipment, transportation, and sale, but he states that the said cotton, at the time and place the same was seized, was worth the sum of twenty-nine thousand six hundred dollars.

Your petitioner further shows, that his said cotton has never been abandoned or forfeited, or become liable to confiscation under any of the acts of Congress in that behalf made and provided; and that it was not liable to seizure or capture under the laws of nations or the rules and usages of war; that he has applied to Congress for a restoration of the seventy-four bales of cotton, or the proceeds thereof, as aforesaid, which application was reported upon favorably by the Committee of Claims, but that the resolution so reported failed to be acted upon by Congress; that application has also been made to the Secretaries of the Treasury and War, for a restoration of said cotton or the proceeds thereof as aforesaid, but without success.

Your petitioner further states, that he is entitled to the said proceeds of said cotton under the provisions of the third section of the act of Congress approved March 12, 1863, and that he is the sole owner thereof.

And your petitioner further prays for such other and further relief in the premises as may be equitable and just; and as in duty bound he will ever pray.

And your petitioner further says, that the said cotton was, and is, his property, and that he is entitled to the proceeds, and said Warren Hall did not at any time own the same, and is not entitled to the proceeds, never having had any interest in the said cotton or in the proceeds thereof.

THEO. H. N. McPHERSON,
Attorney for Petitioner.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Theodore H. N. McPherson, being first duly sworn, says that he is attorney of the petitioner, who is absent from the city; that no assignment of the claim set forth in the above petition, or any part thereof, or any interest therein, has been made, except as in said petition stated; that the said petitioner is justly entitled to the amount therein claimed from the United States, after deducting all just credits and offsets; and that the facts stated in said petition he believes are true.

THEO. H. N. McPHERSON.

13 Subscribed and sworn before me this 16th day of February, A. D. 1869.

[SEAL.] EDM. F. BROWN,
Commissioner of the Court of Claims.

14 In the United States Court of Claims.

MARGARET ROACH, EXECUTRIX OF BENJAMIN ROACH, deceased, *vs.* THE UNITED STATES. } 3541.

WARREN HALL *vs.* THE UNITED STATES. } 3232–3279.

These cases coming on to be heard upon the petitions of both claim-

Ordered: That the claimants in the above cases interplead within fifteen days from this date.

By the court.

February 9, 1869.

A true copy of record.

In the United States Court of Claims.

WARREN HALL
vs.
THE UNITED STATES. } 3232.

SAME
vs.
SAME. } 3279.

Ordered by the court, and by consent of counsel, that the above two cases be consolidated as one; and that the evidence taken under both petititons shall be used in the same trial.

By the court.

February 22, 1869.

A true copy of record.

U. S. Court of Claims.

11 *Petition of interpleader.*

BENJAMIN ROACH
vs.
THE UNITED STATES. }

To the honorable the judges of the United States Court of Claims:

Your petitioner, Benjamin Roach, by way of interpleader, respectfully showeth:

That he is a citizen of the United States, and resides in the city of New Orleans, in the parish of Orleans, and in the State of Louisiana; and that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said Government.

Your petitioner states that in the month of April, A. D. 1863, he was the owner and in possession of seventy-four bales of cotton, weighing in all thirty-seven thousand pounds, and which was then and there worth twenty-nine thousand six hundred dollars, on his plantation near Greenville, in Washington County, in the State of Mississippi; that on the 17th day of April, 1863, after the occupation of that portion of the State by the United States forces, all of said cotton was, without the consent of your petitioner, and against his will, seized and taken possession of by Wm. H. Barlow, lieutenant and quartermaster of the 31st regiment of Missouri infantry, acting under orders of Major-General Steele, commanding the United States forces at that point; that the said cotton was placed on board the steamer Metropolitan, and shipped to Major-General Grant, at Young's Point, in the State of Louisiana, and there placed on board of gunboats; and your petitioner is informed and believes that the said cotton was turned over to the
12 agents of the Treasury Department, by whom it was sold, and

the net proceeds thereof have been paid into the Treasury of the United States.

Your petitioner avers that he is unable to state the precise sum for which said cotton was sold, or the expenses attending its seizure, shipment, transportation, and sale, but he states that the said cotton, at the time and place the same was seized, was worth the sum of twenty-nine thousand six hundred dollars.

Your petitioner further shows, that his said cotton has never been abandoned or forfeited, or become liable to confiscation under any of the acts of Congress in that behalf made and provided; and that it was not liable to seizure or capture under the laws of nations or the rules and usages of war; that he has applied to Congress for a restoration of the seventy-four bales of cotton, or the proceeds thereof, as aforesaid, which application was reported upon favorably by the Committee of Claims, but that the resolution so reported failed to be acted upon by Congress; that application has also been made to the Secretaries of the Treasury and War, for a restoration of said cotton or the proceeds thereof as aforesaid, but without success.

Your petitioner further states, that he is entitled to the said proceeds of said cotton under the provisions of the third section of the act of Congress approved March 12, 1863, and that he is the sole owner thereof.

And your petitioner further prays for such other and further relief in the premises as may be equitable and just; and as in duty bound he will ever pray.

And your petitioner further says, that the said cotton was, and is, his property, and that he is entitled to the proceeds, and said Warren Hall did not at any time own the same, and is not entitled to the proceeds, never having had any interest in the said cotton or in the proceeds thereof.

THEO. H. N. McPHERSON,
Attorney for Petitioner.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Theodore H. N. McPherson, being first duly sworn, says that he is attorney of the petitioner, who is absent from the city; that no assignment of the claim set forth in the above petition, or any part thereof, or any interest therein, has been made, except as in said petition stated; that the said petitioner is justly entitled to the amount therein claimed from the United States, after deducting all just credits and offsets; and that the facts stated in said petition he believes are true.

THEO. H. N. McPHERSON.

13 Subscribed and sworn before me this 16th day of February, A. D. 1869.

[SEAL.] EDM. F. BROWN,
Commissioner of the Court of Claims.

14 In the United States Court of Claims.

MARGARET ROACH, EXECUTRIX OF BENJAMIN ROACH, deceased,
vs.
THE UNITED STATES. } 3541.

WARREN HALL
vs.
THE UNITED STATES. } 3232–3279.

These cases coming on to be heard upon the petitions of both claim-

ants and the pleas of the defendants thereto, together with the interpleadings of the parties claimant, and the answers thereto, between themselves and all the proofs on both sides; it is now adjudged and decreed by the court, after due consideration, that the petition of the claimant, Warren Hall, be dismissed.

And the court now further adjudge and decree that Margaret Roach, executrix of Benjamin Roach, deceased, do have and recover of and from the United States the net proceeds of 69 bales of cotton, amounting to $7,042.83, and the ratable proportion of illegal charges, amounting to $1,869$\frac{00}{000}$; amounting in the aggregate to the sum of eight thousand nine hundred and eleven dollars and eighty-three cents, ($8,911$\frac{83}{100}$.)

By the court.

January 6, 1874.

A true copy of record.

In the United States Court of Claims, December term, 1873.

WARREN HALL
vs.
THE UNITED STATES. } No. 3279–3232.

Now comes the said claimant, by his solicitors, Denver and Peck, and ask for an appeal from the decision of this court rendered on the 6th day of January, 1874, to the Supreme Court of the United States.

DENVER AND PECK,
Solicitors for Claimant.

Filed Feb. 18, 1874.

Ordered, that the appeal be allowed as prayed for.

By the court.

Feb. 19, 1874.

United States Court of Claims.

WARREN HALL
vs.
THE UNITED STATES.

MARGARET ROACH, EXECUTRIX OF BENJAMIN ROACH, deceased,
vs.
THE UNITED STATES.

Filed January 5, 1874.

FACTS.

After these suits were brought, and while they were both pending and undetermined, the claimant Roach, by leave of the court, filed his petition of interpleader, in which he claims that the cotton in controversy in these suits was his individual property at the date of its capture. Both causes were heard together, and the court find the facts to be as follows:

1. The claimants in both cases seek to recover the proceeds of the same lot of cotton.

2. The cotton claimed was raised, ginned, and baled on Roach's plantation, known as "Bachelor's Bend," on the Mississippi River, near Greenville, in the State of Mississippi. It was the remnant of a large crop of 1861, which had previously been secreted in a cane-thicket on the plantation, to prevent its destruction by the rebels, who were burning cotton in that vicinity.

3. About the 17th of April, 1863, Lieut. William H. Barlow, acting quartermaster of the Thirty-first Missouri Infantry, under Major-General Steel, then in command of the United States forces stationed at Greenville, near Roach's plantation, seized seventy-four bales of the cotton secreted as aforesaid in the cane-thicket, and hauled it to the river, where it was placed on Government transports and shipped under E. M. Joel, the quartermaster of the expedition, to Milliken's Bend, and there turned over to Captain Reno, A. Q. M.

4. During the month of April, Captain Reno received at Milliken's Bend, from officers, other cottons, which, with the lot above mentioned, amounted to one hundred and seven bales. In May following he placed seventy-five bales of cotton, taken from the lot of one hundred and seven bales, on the steamer Tigris, as a barricade to enable her to run the Vicksburgh batteries. The Tigress was wrecked on her way, and sixty-eight bales out of the seventy-five on board were rescued, and shipped to W. P. Mellen, at St. Louis, Mo., and there regularly sold on the 5th of April, 1863, for the gross sum of $9,134.67, from which, among other charges, were deducted $1,929.44, custom-house fees, and $240.06, internal-revenue tax, and the proceeds, less all charges, $6,141.23, paid into the Treasury.

5. The thirty-two bales remaining of the one hundred and seven, at Milliken's Bend, after the seventy-five bales were placed on the Tigris, were shipped by Captain Reno, about the 5th of May, 1863, to Memphis, Tenn. They arrived there on the 7th, and were sent forward
18 to W. P. Mellen, supervising special agent, Treasury Department, at Cincinnati, where they were sold on the 15th of June, 1863, for the gross sum of $5,135.47.

The total charges on this lot were $759.55, among which were $481.96 custom-house fees, and $60.25 internal-revenue tax. The net proceeds, $4,065.92, were paid into the Treasury.

6. The court further find, that of the lot of one hundred and seven bales aforesaid, the proceeds of only one hundred bales reached the Treasury, and that the proportion of that number of bales involved in these suits is only sixty-nine bales.

7. The evidence in respect to the ownership of the cotton claimed in both petitions is not only voluminous, but exceedingly conflicting, and much of it wholly irreconcilable.

The claimant Hall is a man of color, of Indian and African descent, and claims to have been free-born. His mother was of Indian extraction, residing at the time of his birth in the city of Alexandria as a free woman.

8. Hall, with other slaves, was taken from a slave-market in Washington City, D. C., by one Thomas Williams, to New Orleans, La., and there the claimant Hall, with other slaves, was sold by a trader to the claimant, Roach's father, who sent them up to the Bachelor's Bend plantation, in Mississippi. Hall was sent up to the plantation in 1844, and remained there as the slave of Roach's father until his death in 1847, and after that as the claimant Roach's slave, who succeeded to the estate of his father, until after the cotton in question was seized in 1863. He was treated all the time as a slave, fed and clothed by his master, and

worked with the other slaves, sometimes as a field-hand, and at others as a stock-minder.

9. On the contrary, Hall now claims to have been a free man while living with claimant Roach, and that, as such, Roach was justly indebted to him on account of stock, hogs, pork, &c., which he had raised on Roach's plantation, and sold and delivered to him, and that the cotton now in suit was given him by Roach in discharge of his indebtedness.

10. Hall, under this claim of title, followed the cotton after its seizure to the river, and made affidavit that he was the lawful owner thereof. Roach's overseer, McDowell, hearing of Hall's claim to the cotton, immediately contested his right to it before the officers of the United States having it in charge; and Hall afterward admitted to McDowell, the overseer, that the cotton was not his, and that his oath in which he asserted a claim thereto was false.

Afterward, however, Hall continued to prosecute his efforts to obtain the release of the cotton, and finally brought suit to recover the proceeds in this court.

I. On the foregoing facts, the court holds as conclusions of law that, under the laws of the State of Mississippi, the claimant Hall, in his condition of servitude, could not lawfully contract with his master, or hold the property he claims to have given in consideration of the cotton, and that no title to it was ever vested in Hall.

II. The title to said cotton at the time of its seizure was in Benjamin Roach, now deceased, and his personal representative has a right to the net proceeds of sixty-nine bales of said cotton, together with a ratable proportion of $2,708.71, improper charges on the lot of one hundred bales, and that judgment be accordingly entered in favor of Margaret Roach, executrix of Benjamin Roach, deceased.

19 MILLIGAN, J., delivered the opinion of the court:

The facts of these cases are peculiar, and when both records are considered together they present a conflict of testimony which, in degree, is rarely met with in courts of justice. Much of it is wholly irreconcilable, and the court in finding the essential facts on which the cases rest, have been compelled to rely on that part of the testimony which is not directly impeached, rather than to attempt to reconcile the cross-swearing of the witnesses.

The early history of the claimant Hall, as presented in the findings, rests on the testimony of a single witness, with no attempt on the part of Roach to contradict or impeach it, or of Hall to enlarge or corroborate it.

He is simply shown to have been a man of color—of Indian and African descent. His mother resided at Alexandria, (now) Va., when he was young, and was recognized as a free woman.

Following this meager account of his early history, he next appears in a slave-market in the city of Washington, D. C., whence he was taken, with other slaves, to New Orleans, La., and there sold by a trader to the claimant Roach's father, who sent him up to Bachelor's Bend plantation, in Mississippi, in 1844. Roach held and treated him as a slave until his death, in 1847, and by succession he passed to his son Benjamin Roach, who continued the same relation towards him until after the seizure of the cotton in suit in 1863.

How it happened he was placed in a slave-market in Washington City does not appear; nor is it shown how old he was when he was transferred to New Orleans and then sold to Roach's father; but that he was

bought there in 1844, and was held in servitude by the claimant's testator and his father until he was emancipated through the instrumentality of the war, is established by the overwhelming weight of evidence in these cases.

Whether Hall's long servitude, under the circumstances just detailed, was legal or illegal, we need not now decide. If it were illegal the laws of Mississippi afforded him an ample remedy to assert and maintain his right to freedom. (Revised code of Mississippi, of 1857, chap. xxxiii, sec. 3, arts. 10 and 11, pp. 236, 237.)

The question we have to deal with is, whether or not the claimant Hall, in his condition of servitude, under the laws of the State of Mississippi, could lawfully acquire and hold the property he claims to have sold to Roach, and for which the cotton in suit is alleged to have been given.

There is no evidence that the elder Roach's title to Hall was ever called in question, or that he had notice when he purchased him in 1844 that he claimed to be free-born. His son, the claimant's testator, at the father's death took the title by succession, and in this respect stands in his father's shoes.

Roach's title to Hall was good against all the world, so far as this record develops the facts, except Hall himself, who, as before shown, could, under the laws of the State, assert his right to freedom if he conceived himself illegally held in servitude. But no one else, under the rigorous laws of Mississippi, could set him at liberty.

The ninth article of the third section, chap. xxxiii, Revised Code of 1857, p. 236, provides: "It shall not be lawful for any person, either by will, deed, or other conveyance, directly or in trust, either express or secret, or otherwise, to make any disposition of any slave or slaves for the purpose or with the intent to emancipate such slave or slaves within the State, or to provide that any such slaves be removed to be emancipated elsewhere, or by any evasion or indirection, so to provide that the Colonization Society, or any donee or grantee, can accomplish the act, intent, or purpose designed to be prohibited by this article. Nor shall it be lawful for any executor, trustee, donee, legatee, or other person, under any pretense whatever, to remove any slave or slaves from this State with the intent to emancipate such slave or slaves. But all such wills, deeds, conveyances, dispositions, trusts, or other arrangements, made, had, or intended to accomplish the emancipation of any slave or slaves, after the death of the owner, no matter when made, shall be deemed and held entirely null and void, and the said slave or slaves thereby attempted or intended to be emancipated shall descend to and be distributed among the heirs at law of the testator, grantor, or owner, or otherwise disposed of as though such testator, grantor, or owner had died intestate."

Passing from the question of the power of the owner of a slave in the State of Mississippi to emancipate such slave, and leaving it to rest on the statute, we come next to consider the capacity of a person held to servitude in that State to acquire and hold property in his own right.

Here again we are confronted by the positive enactments of the State. The third article of chap. xxxiii, sec. 1, Revised Code of 1857, p. 235, declares that "all negro and mulatto slaves in all courts of judicature in this State shall be held, taken, and adjudged to be personal property." And article 32, section 8, same chapter, prohibits every master or employer of a slave from licensing such slave to go at large and trade as a free man, and the master or employer so offending is declared liable to

indictment, and on conviction to be fined $50, which, after conviction, may be repeated as often as the offense shall be committed.

Article 35, ib., p. 243, declares: "If any owner or employer of a slave shall license or permit such slave to go at large through any county or neighborhood, and buy any article whatever for the purpose of traffic, or for the purpose of selling again, either for the owner or employer, or for the benefit of the slave, on his own account, such owner or employer shall be guilty of a misdemeanor, and may be indicted therefor, and on conviction shall be fined in the sum of fifty dollars; and if, after conviction, the slave shall be found going at large as aforesaid, the owner or employer may be again punished in the same way, and so on as often as the offense shall be repeated; and besides the foregoing penalty, any such slave may be apprehended and treated as a runaway."

Again, article 41, section 9, same chapter, ib., p. 244, declares it a high misdemeanor for "any person who shall himself, or by his agent, buy, or sell to, or receive from, any slave, any article, thing, or commodity whatever, * * * without the written consent or permission of the master, or owner, or employer, specifying what articles are permitted to be bought or sold, or permission given in person."

The penalty attached to this provision of the statute is a fine of not less than $50 or more than $500 for every offense.

Following this stringent provision of the statute comes another still more severe. The forty-seventh article makes it the duty of sheriffs, constables, coroners, justices of the peace, and town constables or marshals, on seeing any slave offering any article for sale, or carrying the same with that intention, without proper permission, to seize from and take such articles or commodities which such slave may have in his possession without authority to sell, and shall moreover inflict, or order to be inflicted, on such slave any number of lashes, not exceeding thirty-nine; and every such sheriff, constable, or other officer, for every failure to enforce this provision, shall be deemed guilty of a misdemeanor.

From these provisions of the laws of Mississippi, which were in
21 force during the greater part, if not the whole period, of Hall's servitude in the State, it seems clear the claimant Hall, in his condition of servitude, was wholly incapacitated by law to acquire and hold the stock, hogs, pork, &c., he claims to have sold to his master, and in consideration of which he received the cotton in question.

He makes no attempt to show that he had any permission, either written or in parol, as required by law, to buy or hold in his own right the property on which Roach's alleged indebtedness to him is founded; nor does he show or attempt to show that he had the license or other permission required by the twelfth section of the Code, p. 253, to remain in the State as a free man, and as such to acquire and hold property.

In every aspect of these cases, viewing them in the light of transactions under the laws of Mississippi, it seems clear the consideration claimed to have been given by Hall for the cotton fails, and on well-settled principles the alleged contract must fail with it.

Hall's title rests on his contract, and however much we may personally regret the severity of the laws of the State in respect to the colored race, and rejoice that they have passed away with the institution they were enacted to sustain, as judicial officers we are compelled to give them effect while they were in force, and therefore we hold no title to the cotton passed to Hall under his alleged contract.

Hall's petition must be dismissed, and judgment entered in favor of

Margaret Roach, executrix of Benjamin Roach, deceased, for the following sums:

Net proceeds of sixty-nine bales of cotton	$7,042 83
Ratable proportion of illegal charges	1,869 00
Total	8,911 83

NOTT, J., dissenting:

I dissent from the conclusions of the court in this case, upon the following grounds:

I. The principal issue is between the claimants, Hall and Roach, and not between either of them and the Government. It is an issue between contending parties seeking the proceeds of the same captured property, but it must also be treated as an issue between master and slave in an action brought against the former to establish the freedom of the latter. When this suit was brought, all of the statutory means for establishing a slave's right to freedom according to the law of Mississippi had virtually expired, and the question must now be determined collaterally, for otherwise it cannot be determined at all. This court having exclusive jurisdiction of these suits for the proceeds of captured property, and being by statute required to try the title of every claimant, must necessarily determine every matter upon which their rights depend, provided the matter cannot be determined in another tribunal.

II. The uncontradicted evidence in the case establishes the fact that Hall was a free man residing in Virginia. At an early age he was reduced to slavery. On the one hand, it is not shown that he was, or could have been, lawfully reduced to a state of involuntary servitude; on the other, it is not possible for him to show the manner in which he was kidnapped or abducted. His own testimony was indeed offered for that purpose, but was rejected by the court as coming within the prohibition of the act June 25, 1868. (15 Stat. at L., p. 75, § 4.) The legal presumption, therefore, must be that he was unlawfully and
22 against his will abducted and taken to Mississippi and there unlawfully detained in bondage. By such involuntary and unlawful servitude he lost none of his rights, and was free to assert and establish them at whatever time and in whatever manner he deemed most judicious. The legal fact of his right to freedom being judicially determined, the decree, on well-established principles, generally if not universally acknowledged in the Southern States, relates back to the time when he was unlawfully reduced to servitude.

III. Assuming that Hall was free, and that this court has jurisdiction to inquire into and determine legally that fact, I think it must be held that Roach could treat him as a freeman, and that as between them he could acquire a title to this property. The statutes of Mississippi to the contrary must be confined in their operation to the citizens and inhabitants of that State, and cannot be extended to a citizen of Virginia who, as a freeman in Virginia, or as a freeman in Mississippi, could purchase and acquire a right to property. If it was the purpose of the laws of Mississippi to allow a man to be held unlawfully in slavery, or to allow a freeman of Virginia to be debarred of his legal rights under the guise of a public policy for the fostering of slavery, it was a purpose which the courts of the United States cannot carry into effect.

IV. As to the title of Hall, it depends upon the same question. If he was free, and a decree to that effect is to relate back to the time when

he was unlawfully enslaved, the law will not inquire as to the title of personal property which came into his possession during his state of illegal servitude. His possession was not constructive possession for the master, but actual possession for himself. The subsequent possession by the Government was but continued possession for Hall as his trustee. He held the property till capture, and then the Government came and continued the possession for him, so far as possession involved legal rights. Roach never, in contemplation of law nor in fact, has disturbed the status of the property since Hall acquired possession. Therefore, it is to be considered as property in Hall's possession, whenever a decree is rendered declaring him to have been free, and where the law finds the property then there it leaves it. Roach, under the law of Mississippi, might have had a legal right to retake the property while Hall was still in his possession as a presumed slave, and this court then could not perhaps have disregarded the taking as void; but he cannot retake it after a decree has passed declaring that the presumed slave was free when he acquired the property.

23 United States Court of Claims, December term, 1873.

WARREN HALL
vs.
THE UNITED STATES. } Nos. 3232 & 3279 consolidated.

CLAIMANT'S FINDING OF FACTS.

The claimant was a freeman by birth, of mixed Indian and African blood, and there is nothing to show that he was ever reduced to slavery by any legal process, but that he was inveigled to New Orleans and there by fraud and violence deprived of his liberty. The elder Benjamin Roach became his owner by virtue of purchase from the kidnapper, and sent him up to work on the Bachelor's Bend plantation near Greenville, in Washington Co., Mississippi, where he remained chiefly engaged in minding and raising stock until the expedition of Gen. Steel landed there about the middle of April, 1863. For several years before that time he had, under an arrangement with Benjamin Roach, jr., the son, executor and one of the heirs of Benjamin Roach, sr., been engaged in raising hogs, the meat from which was to be taken by him (Roach) for use on his plantation, but for which he was to pay
24 the claimant a fair price.

Some time during the winter preceding the arrival of Gen. Steel at Greenville, the rebel authorities ordered all the cotton in that neighborhood to be burned, to prevent it from falling into the hands of the United States authorities; and, although there is some conflicting evidence on this point, it is pretty clear that Benjamin Roach was then present in person, superintending the burning, and that he then and there paid off the unsettled account due Hall by giving him all the cotton he (Hall) might be able to save out of that which had been doomed to destruction, and this was accepted by Hall in full payment of the same.

As soon as the United States troops under Gen. Steel landed at Greenville, Hall hastened to report his cotton to them, and, guided by him, wagons were sent out by Col. E. M. Joel, under command of Capt. Cobb, a regimental quartermaster, who brought the cotton in to the river-bank, put on board the steamer Crescent City, and turned over to Capt. Reno at Milliken's Bend. It was afterwards used to protect Government boats

in running the blockade of the rebel batteries at Vicksburg. After being so used it was brought back to Young's Point and Milliken's
25 Bend, shipped on board the Hiawatha, Capt. Henry G. Carson, to Memphis, Tenn., where it was landed June 27, 1863, and turned over to Thomas H. Yeatman, assistant special agent of the Treasury Department, by him sold and the net proceeds, amounting to $18,769.50, placed in the Treasury.

Roach intervenes, asserting that the cotton did not belong to Hall, but that it did belong to the estate of which he is the executor. Roach was the owner or had the control of several plantations in that part of Mississippi, from which he obtained a good deal of cotton after the fall of Vick'burg, and from the tracing of the lot claimed by him in No. 3541, now presented along with this case to the court, it is evidently not the same as the lot claimed by Hall.

The receipt given by Lt. W. H. Barlow to Roach's overseer, McDowell, is not admissible. There is no proof of its genuineness, and all the circumstances connected with it indicate that it was a fraud. Barlow did not make the seizure, never had the cotton in his possession for a single moment, and never reported it in his accounts. The Departments of the Government have been searched in vain to connect him with it, but save and except this bit of paper which is produced
26 by Roach's overseer, no trace can be found. Neither has it been shown that the cotton alleged by the Barlow receipt to have been "placed on board the steamer Metropolitan, and shipped to Gen. Grant at Young's Point, La.," was ever delivered to him, nor is it likely that any such transaction could ever have occurred. In the regular course of business, had Lt. Barlow seized or taken any property he should have reported it to his chief, who was Col. Joel, and he would have shipped it to the chief quartermaster at Young's Point, and not directly to the general in command of the Army.

From the time of the shipment, as alleged, of the cotton claimed by Roach, on board the steamer Metropolitan, there is no connection whatever with that claimed by Hall. Roach traces his through the blockade, then it is shipped on board the Albert Pierce, Sept. 4, 1863, from Vicksburg up the river to St. Louis, Mo., where it was sold October 5, 1863, by W. P. Mellen, more than two months after Hall's cotton had been sold at Memphis, Tenn.

At the time the cotton was taken at Greenville, Roach's overseer, McDowell, was present, heard Hall claim it, but made no objection, and when interrogated by Gen. Burbridge, under oath, he said that
27 Roach had no cotton there, but it all belonged to the negroes. Hall followed the cotton claimed by him from Greenville to Young's Point, and from Young's Point up to Memphis, and his ownership was never disputed until the claimant, Roach, intervened in this suit.

Previous to the war a freeman in Mississippi could both own and inherit property in that State, and during the war there was no change in that respect. Hall was a freeman and did own cotton at or near Greenville, Mississippi.

The proclamation of President Lincoln, emancipating all the slaves in the United States, was issued on the 1st day of January, A. D. 1863, and even if Hall had been a slave previous to that time, he was legally a freeman in April, 1863.

HUGHES, DENVER & PECK,
Attys for Claimant, Warren Hall.

Upon the foregoing proposed findings the court made the following order, to wit:

Disallowed because argumentative and immaterial, except as incorporated in the court's findings.

Filed May 15, 1873.

28 In the Court of Claims.

WARREN HALL
vs.
THE UNITED STATES. } No. 3232, 3279.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the solicitors for the claimant for the allowance of an appeal, as filed in the clerk's office February 18, 1874, and of the order of the court of February 19, 1874, allowing the same of the findings of fact by the court and the conclusions of law thereon, upon which the majority of the court founded their judgment, of the opinion of the court and the dissenting opinion of Judge Nott, of the requested findings by the claimant, and the order refusing the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this fifth day of March, A. D. 1874.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) Court of Claims. No. 175. Warren Hall, appellant, vs. The United States. Filed 14th May, 1874.